

McGREGOR W. SCOTT
United States Attorney
KATHERINE E. SCHUH
Assistant United States Attorney
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000
Facsimile: (559) 497-4099

Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON CELES,

Defendant.

CASE NO. 1:20-CR-00056-NONE-SKO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: November 18, 2020
TIME: 1:00 p.m.
COURT: Hon. Sheila K. Oberto

This case was previously set for a status conference on November 16, 2020. By order of the Court, the date was moved to November 18, 2020. By stipulation, the parties now move to continue the status conference to January 6, 2021, and to exclude time between November 16, 2020 and January 6, 2021.

On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to continue all criminal matters to a date after June 1. This and previous General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no

1 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 2 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 3 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 4 or in writing”).

5 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 6 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
 7 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
 8 the ends of justice served by taking such action outweigh the best interest of the public and the
 9 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
 10 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
 11 ends of justice served by the granting of such continuance outweigh the best interests of the public and
 12 the defendant in a speedy trial.” *Id.*

13 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 14 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 15 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 16 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 17 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 18 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 19 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 20 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 21 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

22 In light of the societal context created by the foregoing, this Court should consider the following
 23 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 24 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
 25 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
 26 pretrial continuance must be “specifically limited in time”).

27
 28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
 Cal. March 18, 2020).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on November 18, 2020.

2. By this stipulation, defendant now moves to continue the status conference until January 6, 2021, and to exclude time between November 16, 2021, and January 6, 2021, under Local Code T4.

3. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case includes investigative reports and related documents, body camera footage, criminal history reports, and court documents. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying.

b) Counsel for defendant desires additional time to review discovery provided by the government, conduct additional investigation regarding the charges, consult with his client, and discuss potential resolution with the government. Defense counsel is also working on preparing a motion to suppress, and needs additional time to brief and argue the issue.

c) Counsel for defendant believes that failure to grant the above-requested continuance would deny him/her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government does not object to the continuance.

e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of November 18, 2020 to January 6, 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: November 9, 2020

McGREGOR W. SCOTT
United States Attorney

/s/ KATHERINE E. SCHUH
KATHERINE E. SCHUH
Assistant United States Attorney

Dated: November 9, 2020

/s/ DOUGLAS FOSTER
DOUGLAS FOSTER
Counsel for Defendant
JASON CELES

FINDINGS AND ORDER

IT IS SO ORDERED.

Dated: November 10, 2020

/s/ Sheila H. Oberto
UNITED STATES MAGISTRATE JUDGE